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2018 SEP 27 PM 4:10

September 27, 2018

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Jeff S. Jordan, Esq.
Assistant General Counsel
Office of Complaints Examination
and Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

Re: MUR 7448

Dear Mr. Jordan:

We write as counsel to Kamala Harris for Senate (the "Committee") and Stephen J. Kaufman, in his official capacity as treasurer of the Committee (collectively, the "Respondents") in response to the complaint filed by the National Legal and Policy Center (the "Complaint"). The Complaint's sole allegation is that the California Democratic Party paid \$35,000 for a mailer on behalf of Kamala Harris for Senate and that \$35,000 is greater than the contribution limit from a state party to a federal candidate. This baseless allegation rests on a fundamental misunderstanding of the law. The Federal Election Campaign Act (the "Act") and Federal Election Commission ("FEC") regulations provide a state party with two main ways to support a candidate for U.S. Senate from the party's state. First, the standard \$5,000 per election contribution limit. Second, the separate ability to make coordinated party expenditures. In full compliance with the Act and FEC regulations, the California Democratic Party paid \$35,000 for mailers on behalf of Kamala Harris for Senate, treated the \$35,000 payment as a coordinated party expenditure, and reported it as such to the FEC. In sum, the \$35,000 payment at issue was nothing more than a bread and butter exercise by a state party of its right to make coordinated party expenditures. Accordingly, the Commission must find no reason to believe that Respondents violated the Act, close the file and take no further action.

FACTUAL BACKGROUND

Kamala Harris is a current United States Senator from California. Senator Harris ran as a candidate for U.S. Senate in the June 7, 2016 primary election in California. At the primary election, Senator Harris secured a spot on the general election ballot. Senator Harris then went

on to win election to the United States Senate at the November 8, 2016 general election.¹
Kamala Harris for Senate is Senator Harris' principal campaign committee.²

Citizens for Waters is the principal campaign committee of U.S. Representative Maxine Waters.³
Representative Waters serves as the Representative for California's 43rd Congressional District.
The California Democratic Party is a federally registered, qualified state party committee of the
Democratic Party.⁴

On approximately October 28, 2016, Citizens for Waters mailed "slate mailer" brochures that
advocated for the election of federal and non-federal candidates at the 2016 general election,
including Kamala Harris. Prior to sending the mailer, Citizens for Waters requested payment
from Kamala Harris for Senate for its share of the production and distribution costs. On October
13, 2016, the California Democratic Party paid Citizens for Waters \$35,000 for the costs of
Kamala Harris' appearance in the mailer on behalf of Kamala Harris for Senate. The California
Democratic Party treated the \$35,000 payment as a coordinated party expenditure for the 2016
general election for U.S. Senate and reported it as such to the FEC.⁵

LEGAL ANALYSIS

In Advisory Opinion 2004-37 (Waters), the Commission held that Citizens for Waters could pay
to produce and mail a brochure, described as Representative Waters' "official sample ballot,"
that advocated for the election of featured federal and non-federal candidates. Under the
proposal, a federal candidate would be included in the brochure only if he or she reimbursed
Citizens for Waters for the full production and distribution costs attributed to him or her. The
Commission therefore held that payments by Citizens for Waters for the brochure "would not
constitute support of, or in-kind contributions to, any Federal candidate appearing in the
brochure, so long as the authorized committee of that Federal candidate reimburses the Waters
Committee . . . within a reasonable period of time."⁶

On approximately October 28, 2016, Citizens for Waters sent out her official sample ballot, like
the one described in Advisory Opinion 2004-37, that featured a number of federal and non-
federal candidates on the ballot at the 2016 general election in California, including Kamala
Harris. In accordance with Advisory Opinion 2004-37, on October 11, 2016, Citizens for Waters
requested payment from Kamala Harris for Senate for \$35,000, the campaign's full share of the

¹ See California Secretary of State, Certified List of Candidates for the November 8, 2016 General Election,
available at <https://elections.cdn.sos.ca.gov/statewide-elections/2016-general/november2016-certified-list-of-candidates.pdf>.

² See FEC Committee ID C00571919.

³ See FEC Committee ID C00167585.

⁴ See FEC Committee ID C00105668.

⁵ See Exhibit A.

⁶ FEC Advisory Opinion 2004-37 (Waters).

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mailer's production and distribution costs. The California Democratic Party promptly paid the invoice on behalf of Kamala Harris for Senate two days later, on October 13, 2016. Accordingly, pursuant to Advisory Opinion 2004-37, Citizens for Waters received full, timely reimbursement for Kamala Harris' portion of the mailer's costs and no in-kind contribution resulted from the mailer. In fact, the Complaint does not allege or present any facts to even suggest that the payment of \$35,000 by the California Democratic Party did not represent then-candidate Kamala Harris' full share of the production and distribution costs for the mailer. The Complaint's sole allegation is rather that the \$35,000 payment exceeded the contribution limit from the California Democratic Party to Kamala Harris for Senate.

In full compliance with the Act, the California Democratic Party paid the \$35,000 mailer cost on behalf of Kamala Harris for Senate using its coordinated party spending authority and then properly reported the payment to the FEC as such. Under the Act and Commission regulations, a state party may contribute up to \$5,000 per election to a candidate for U.S. Senate.⁷ In addition to the \$5,000 contribution limit, a state party may also make "coordinated party expenditures" in connection with the general election of U.S. Senate candidates.⁸ FEC regulations are clear that the ability to make coordinated party expenditures is a separate and distinct avenue of candidate support aside from the state party's \$5,000 per election contribution limit.⁹ Commission guidance explains the difference between the party's use of its contribution limit and coordinated party spending authority as follows: "[i]n making a coordinated party expenditure, the party committee pays for goods or services in coordination with a candidate but does not give the money directly to the candidate or candidate committee. *For example, the payment of a campaign bill could be treated and reported as a coordinated party expenditure . . .*"¹⁰ Accordingly, the Act, FEC regulations and Commission guidance are all clear that a state party can use coordinated spending authority, in lieu of the regular \$5,000 per election contribution limit, to pay a bill on behalf of a general election candidate for U.S. Senate in their state.

The coordinated party expenditure limit in a given election cycle is calculated based on the current voting age population in the party's state.¹¹ In 2016, the California Democratic Party had \$2,886,500 in coordinated party spending authority for the general election for U.S. Senate in California.¹² The California Democratic Party used a small part of this authority to pay Citizens for Waters \$35,000 out of its federally registered account to cover the mailer cost on behalf of Kamala Harris for Senate. The California Democratic Party then reported the \$35,000 payment as a coordinated party expenditure in support of Kamala Harris on its applicable FEC report, the

⁷ 52 U.S.C. § 30116(a)(2)(A), (a)(6); 11 C.F.R. § 110.2(b)(1).

⁸ 11 C.F.R. § 109.32(b)(1), (b)(4).

⁹ See *id.* § 109.32(b)(4).

¹⁰ Federal Election Commission, Campaign Guide for Political Party Committees at 48 (Aug. 2013), available at <https://www.fec.gov/resources/cms-content/documents/partygui.pdf> (emphasis added).

¹¹ 11 C.F.R. § 109.32(b)(2)(i).

¹² See Federal Election Commission, Coordinated Party Expenditure Limits for 2016 General Election Senate Nominees, available at https://transition.fec.gov/info/charis_cpe_2016.shtrnl.

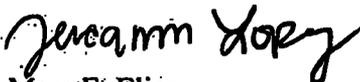
Pre-General report.¹³ Accordingly, the Complaint does nothing more than describe a text book example of a state party's proper use of its coordinated party spending authority.

CONCLUSION

The Complaint's sole allegation is that the California Democratic Party paid a \$35,000 bill on behalf of Kamala Harris for Senate and, therefore, violated the \$5,000 per election contribution limit to a federal candidate. The California Democratic Party paid the bill using its coordinated party spending authority, a separate and distinct allowance that gave the California Democratic an additional \$2,886,500 limit to spend funds in connection with the 2016 general election for U.S. Senate. Accordingly, the Complaint does nothing more than describe a perfectly lawful use by a state party of its coordinated party spending authority.

The Complaint does not allege a single fact that provides a basis for the Commission to find "reason to believe" that the Respondents violated the Act or Commission regulations. Accordingly, the Commission must find no reason to believe a violation occurred and close the file.

Very truly yours,



Marc E. Elias
Danielle E. Friedman
Jacquelyn K. Lopez
Counsel to Respondents

¹³ See Exhibit A.

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FEC FORM 3X

REPORT OF RECEIPTS AND DISBURSEMENTS

For Other Than An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT ▼ Example: If typing, type over the lines.

California Democratic Party

ADDRESS (number and street)

1830 9th Street

Check if different than previously reported. (ACC)

Sacramento

CA

95811

2. FEC IDENTIFICATION NUMBER ▼ CITY ▲ STATE ▲ ZIP CODE ▲

C00105668

3. IS THIS REPORT NEW OR AMENDED (N) (A)

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:

- April 15 Quarterly Report (Q1)
- July 15 Quarterly Report (Q2)
- October 15 Quarterly Report (Q3)
- January 31 Year-End Report (YE)
- July 31 Mid-Year Report (Non-election Year Only) (MY)
- Termination Report (TER)

- (b) Monthly Report Due On:
- Feb 20 (M2)
 - Mar 20 (M3)
 - Apr 20 (M4)
 - May 20 (M5)
 - Jun 20 (M6)
 - Jul 20 (M7)
 - Aug 20 (M8)
 - Sep 20 (M9)
 - Oct 20 (M10)
 - Nov 20 (M11) (Non-Election Year Only)
 - Dec 20 (M12) (Non-Election Year Only)
 - Jan 31 (YE)

- (c) 12-Day PRE-Election Report for the:
- Primary (12P)
 - General (12G)
 - Runoff (12R)
 - Convention (12C)
 - Special (12S)

Election on _____ In the State of _____

- (d) 30-Day POST-Election Report for the:
- General (30G)
 - Runoff (30R)
 - Special (30S)

Election on _____ In the State of _____

5. Covering Period 10 Q1 2016 through 10 19 2016

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Moret, Katherine, ..

Type or Print Name of Treasurer

Signature of Treasurer

Moret, Katherine, ..

[Electronically Filed]

Date

10 27 2016

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 52 U.S.C. § 30109.

Office Use Only								
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FEC FORM 3X Rev. 05/2016

FEC FORM 3X

REPORT OF RECEIPTS AND DISBURSEMENTS For Other Than An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (In full) TYPE OR PRINT Example: If typing, type over the lines. California Democratic Party

ADDRESS (number and street) 1830 9th Street Sacramento CA 95811

2. FEC IDENTIFICATION NUMBER CITY STATE ZIP CODE

C00105668

3. IS THIS REPORT NEW OR AMENDED

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:

- April 15 Quarterly Report (Q1)
July 15 Quarterly Report (Q2)
October 15 Quarterly Report (Q3)
January 31 Year-End Report (YE)
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(b) Monthly Report Due On: Feb 20 (M2), May 20 (M5), Aug 20 (M8), Nov 20 (M11)
Mar 20 (M3), Jun 20 (M6), Sep 20 (M9), Dec 20 (M12)
Apr 20 (M4), Jul 20 (M7), Oct 20 (M10), Jan 31 (YE)

(c) 12-Day PRE-Election Report for the: Primary (12P), General (12G), Runoff (12R), Convention (12C), Special (12S)

(d) 30-Day POST-Election Report for the: General (30G), Runoff (30R), Special (30S)

5. Covering Period 10/01/2016 through 10/19/2016

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Morel, Katherine, . .

Type or Print Name of Treasurer

Signature of Treasurer

Morel, Katherine, . .

[Electronically Filed]

Date

02/14/2017

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 52 U.S.C. § 30109.

Table with 10 columns for Office Use Only

SCHEDULE F (FEC Form 3X)
ITEMIZED COORDINATED PARTY EXPENDITURES MADE BY
POLITICAL PARTY COMMITTEES OR DESIGNATED AGENT(S)
ON BEHALF OF CANDIDATES FOR FEDERAL OFFICE

PAGE 349 OF 397

FOR LINE 25 OF FORM 3X

(To be used only by Political Committees in the General Election)

NAME OF COMMITTEE (In Full)
California Democratic Party

Has your committee been designated to make coordinated expenditures by a political party committee? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If YES, name the designating committee: California Democratic Party	Full Name of Subordinate Committee		
	Mailing Address		
	City	State	ZIP Code

Full Name (Last, First, Middle Initial) of Each Payee <input type="checkbox"/> Memo Item				Purpose of Expenditure	001 Category/Type	
Bertolina & Barnato Consulting				Finance Consulting		
Mailing Address 1005 12th Street Suite H				Date		
City Sacramento	State CA	Zip Code 95814-3940		10	13	2016
Name of Federal Candidate Supported Harris, Kamala, . .	Office Sought:	<input checked="" type="checkbox"/> House	State: CA	Amount		
		<input type="checkbox"/> Senate	District: _____			850.00
		<input type="checkbox"/> Presidential				
Aggregate General Election Expenditure for this Candidate ▶				784399.27		
				Transaction ID : EDTFALC7293		

Full Name (Last, First, Middle Initial) of Each Payee <input type="checkbox"/> Memo Item				Purpose of Expenditure	001 Category/Type	
Cagle, Elena, . .				salary		
Mailing Address 5600 Wilshire Blvd,#434				Date		
City Los Angeles	State CA	Zip Code 90036		10	14	2016
Name of Federal Candidate Supported Harris, Kamala, . .	Office Sought:	<input checked="" type="checkbox"/> House	State: CA	Amount		
		<input type="checkbox"/> Senate	District: _____			2029.16
		<input type="checkbox"/> Presidential				
Aggregate General Election Expenditure for this Candidate ▶				784399.27		
				Transaction ID : EDTFALC7294		

Full Name (Last, First, Middle Initial) of Each Payee <input type="checkbox"/> Memo Item				Purpose of Expenditure	001 Category/Type	
Citizens For Waters				Payment for Fair share of state mailer (K.Harris,USSen)		
Mailing Address 3700 Wilshire Blvd. Suite 1050B				Date		
City Los Angeles	State CA	Zip Code 90010-3015		10	13	2016
Name of Federal Candidate Supported Harris, Kamala, . .	Office Sought:	<input checked="" type="checkbox"/> House	State: CA	Amount		
		<input type="checkbox"/> Senate	District: _____			35000.00
		<input type="checkbox"/> Presidential				
Aggregate General Election Expenditure for this Candidate ▶				784399.27		
				Transaction ID : EDTFALC7292		

SUBTOTAL of Expenditures This Page (optional).....▶	37879.16
TOTAL This Period (last page this line number only).....▶	

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